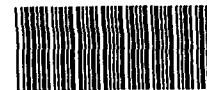


Office of Environmental Policy, Analysis, and Assessment

SDMS Doc ID 165992

REGULATORY FORUM

November 18, 1999

Summary of Meeting*pg. 15***TNRCC contact:** Randy Wood, (512) 239-4900; Casey Vise, (512) 239-1932**Contents**

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standards/revisions

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Update on Senate Bills 7 and 766
Upset/Maintenance Rules Update
Texas Risk Reduction Rules Update (Guidance Documents)
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water/fish # 20ppb
- 3 member commission agreed
1/12 staff recs
- 45 day public comment / public
hearing
- end March 00

Highlights of Commissioners' Work Sessions

There has only been one Commissioners' Work Session since the last Regulatory Forum, and it took place on October 15. The following issues were on the agenda:

1. **Consideration of issues related to the conduct of the Texas Year 2000 Air Quality Study (TexAQS 2000) and TNRCC's participation.** Dr. David Allen, of the University of Texas, in discussing this issue, said this study is the first time that major national resources such as Brookhaven National Laboratories, the National Oceanographic and Atmospheric Administration, and numerous Texas universities have offered to help Texas answer technical questions about our most difficult air pollution problems. The study can go a long way in helping the state to ensure that the right pollution reduction strategies are being put into place, which remains a major concern of the business community and the public. The commissioners approved staff's request for personnel participation and financial commitment of \$1.0-1.3 million of the total \$10-15 million effort. The actual study is planned to be conducted in mid- to late summer 2000.
2. **Consideration of issues related to the status of Wastewater Authorizations to Construct (ATC) and an Evaluation of Assessing a Fee.** Staff pointed out a continuing decline in the number of ATCs, crediting it to the implementation of tasks from the April 23 Work Session and ongoing

efforts to process the National Pollutant Discharge Elimination System backlog. Staff commented that Texas Water Code, Section 5.325, allows the TNRCC to charge a fee for evaluating an ATC and asked for authority to charge a fee. The commissioners directed that a \$250 fee be charged to applicants requesting an ATC.

3. **Consideration of agency policy relating to certification of Clean Water Act, Section 404 permits issued by the U.S. Army Corps of Engineers.** Staff described an interim policy that is intended to avoid duplication of efforts with the Corps of Engineers and which would be in effect until such time as a long term agreement or understanding can be reached with the Corps. Briefly, for a project where there is fill of less than five acres of water or a project that would affect less than 1,500 lineal feet of a water course, the applicant would receive a "no action" letter indicating the agency would not be undertaking any further review. A certification review would be conducted for projects which are greater than five acres or 1,500 feet of a water course. The commissioners directed staff to implement the interim policy and procedures for 401 certification as outlined in the presentation.
4. **Consideration of the commission's regional gasoline regulations including enforcement, methyl tertiary-butyl ether (MTBE), and other related issues.** Staff discussed a recent letter from the U.S. Environmental Protection Agency (EPA) Region 6 regarding the state's low sulfur gasoline waiver, the states' lower Reid vapor pressure (RVP) waiver request, and some enforcement issues. Staff suggested opening the clean gasoline rules, and the commissioners directed staff to return with proposed rulemaking which would answer EPA's enforcement questions and would place a restriction on any increase in MBTE as a means to reach a lower RVP requirement.
5. **Consideration of issues related to the Sunset Advisory Commission's review of the TNRCC.** The commissioners were provided an update on this issue. No action was taken.
6. **Docket No. 1999-0930-SIP. Consideration for adoption of revisions to the State Implementation Plan (SIP) concerning technical corrections to the 9% Rate-of-Progress (ROP) for the Dallas/Fort Worth (DFW) ozone nonattainment area. This SIP revision would quantify additional volatile organic compound (VOC) reductions not previously credited in order to meet the U.S. Environmental Protection Agency's (EPA) 9% ROP requirement and establish a transportation conformity budget. (Brian Foster) (Rule Log No. 99045-SIP-AI).** The commissioners approved staff's recommendation for adoption of the SIP.
7. **Consideration of activities associated with State Implementation Plans and update on court decision concerning the 8-hour ozone designation.** No action was taken on this issue.
8. **Consideration of legislative implementation affecting the TNRCC and other issues related to actions taken by the 76th Texas Legislature are discussed later in the Reg Forum meeting.** No action was taken on this issue.
9. **Planning for the next Commissioners' Work Session.** The next work session is January 14, 2000. The work sessions on December 3 and 17 are canceled.

Q: Can you explain the concept of a transportation conformity "budget"?

A: Well, we're required to include in all of our SIP revisions a "budget," or number of allowable tons of emissions of a given pollutant--say, oxides of nitrogen (NO_x)--that can be emitted by mobile sources per day. The SIP revision must then demonstrate that its control measures will result in an amount of NO_x

emissions that fits within that budget.

Staff: Randy Wood, (512) 239-1120

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Sunset Advisory Commission Report

The Sunset Advisory Commission's review of the TNRCC began at the end of September 1999 and will probably last until April of 2000. The agency is scheduled to release its report on the TNRCC the following May. After 3-4 weeks of analysis (probably in June of 2000) the commission will hold a public hearing on the report in Austin.

All vacancies on the commission have now been filled; current membership is as follows:

From the Texas House of Representatives:

Fred Bosse, Houston, Chair
Brian McCall, Plano
Pete Gallego, Alpine
Warren Chisum, Pampa
Bill Jeter, Public Member, Bryan

From the Texas Senate:

Chris Harris, Arlington, Vice Chair
Eddie Lucio, Jr., Brownsville
David Sibley, Waco
Judith Zaffirini, Laredo
Dr. Tim Roth, Public Member, El Paso

After its first meeting in November, the commission approved the schedule for review of the TNRCC outlined above. The agency has also contacted numerous stakeholder groups to assist with the review. Anyone wishing to participate in one of these groups should E-mail Jay Schmidt at jay.schmidt@sunset.state.tx.us.

Staff: Terri Seales, (512) 239-1225

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Rules in Progress Update

Since the last Regulatory Forum on October 14, 1999, we have added five new rulemaking items to the Rules Tracking Log.

We have three new quadrennial reviews--one each for 30 TAC Chapters 294, 295, and 335. These reviews comply with the Texas Government Code and the General Appropriations Act, Article 9, which requires state agencies to review and consider for readoption each of their rules every four years. Each of these quad reviews is scheduled to be adopted by the end of August 2000.

We have also added the Houston/Galveston (HGA) Mid-course Evaluation Commitment State

Implementation Plan (SIP) Package, and the Water Plan Development Rule, which implements Senate Bill (SB) 658.

**Chapter 294 (Underground Water Management Areas), Quadrennial Review
Rule Log No. 99075-294-WT**

Why are we proceeding with this rulemaking, and what do we hope to accomplish?

The quadrennial review of Chapter 294 (Underground Water Management Areas), is being conducted to determine if the regulation is still valid and if the controls are still appropriate, and in order to receive suggestion for improvements. The review will include evaluation of recent legislation affecting the statutory authority for the rule.

What is the projected timeframe?

No significant or substantive changes are anticipated. Proposal language will be published in the February 25, 2000 *Texas Register*.

Dow we plan to involve stakeholders, and if so, how can they get involved?

Input from stakeholders will be solicited during this rulemaking. If you are interested, contact Mary Ambrose at (512) 239-4813.

**Chapter 335 (Industrial Solid Waste and Industrial Hazardous Waste), Quadrennial Review
Rule Log No. 99076-335-WS**

Why are we proceeding with this rulemaking, and what do we hope to accomplish?

Chapter 335 (Industrial Solid Waste and Industrial Hazardous Waste), Quadrennial Review is being conducted to determine if the original reason for adopting the rules continues to exist. Additionally, staff will determine whether portions of the chapter should be revised to clarify requirements, reflect changes to other TNRCC rules, improve compliance, and correct inconsistencies. Examples of specific proposed changes include: repealing Subchapter L (Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities); revising Subchapter A to clarify the transfer facility definition and requirements; and other changes to ensure the consistency of certain requirements within the chapter.

What is the projected timeframe?

We must have the rules readopted by the end of August 2000.

Dow we plan to involve stakeholders, and if so, how can they get involved?

Input from stakeholders will be solicited during this rulemaking. If you are interested, contact Ray Austin at (512) 239-6814.

**Chapter 295 (Procedural Water Rights), Quadrennial Review
Rule Log No. 99077-295-WT**

Why are we proceeding with this rulemaking, and what do we hope to accomplish?

Chapter 295 (Procedural Water Rights), Quadrennial Review contains the procedural rules for water use permits, including the general requirements for an application, notice requirements, and fees. This proposal also addresses rule amendments for the implementation of SB 1 (75th Legislature). No changes are expected to be added to this rule proposal.

What is the projected timeframe?

Proposal language should appear in the *Texas Register* in January 2000.

Dow we plan to involve stakeholders, and if so, how can they get involved?

Input from stakeholders will be solicited during this rulemaking. If you are interested, contact Ray Pizarro at (512) 239-2588.

Chapter 297, Water Plan Development (SB 658) Rule Log No. 99078-297-WT

Why are we proceeding with this rulemaking, and what do we hope to accomplish?

This rule will implement SB 658, 76th Session, to specify that, beginning January 5, 2002, the TNRCC may not issue a water right for municipal use in a region that does not have a regional water plan on file with the Texas Water Development Board in accordance with Texas Water Code, Section 16.053. In conjunction with the proposed amendment to this rule, TNRCC staff proposes the review of 30 TAC Chapter 297, concerning Water Rights, Substantive, in accordance with the General Appropriations Act, Article IX, Section 167, 75th Legislature, 1997.

What is the projected timeframe?

Staff has not yet completed a timeline.

Dow we plan to involve stakeholders, and if so, how can they get involved?

Bruce Moulton is coordinating this effort on behalf of the Office of Environmental Policy, Analysis, and Assessment. He can be contacted at (512) 239-4809 for stakeholder involvement information.

HGA Mid-course Evaluation Commitment SIP Rule Log No. 99073-SIP-AI

Why are we proceeding with this rulemaking?

The U.S. Environmental Protection Agency (EPA) must find the onroad mobile source emissions budget to be adequate under transportation conformity requirements; otherwise, highway projects cannot proceed. In order for the latest budget, submitted with the November 1999 SIP, to be approvable, the state must commit to perform certain actions, described below.

What do we hope to accomplish, or, what is the scope of the rulemaking?

This SIP revision is necessary in order for EPA to approve the HGA transportation conformity budget, so that highway projects can proceed. The current action consists of a listing and quantification of measures needed to meet the attainment shortfall, and commitments by the state to close the shortfall gap and

perform a mid-course review in 2003.

What is the projected timeframe (proposal and adoption)?

Staff plans to propose the rules at the December 16, 1999 agenda, and adopt them at the April 19, 2000 agenda.

Do we plan to involve stakeholders, and, if so, how can they get involved?

Stakeholders already take part in weekly conference calls to discuss SIP issues. Information will also be provided at upcoming meetings which stakeholders routinely attend.

Handouts:

1. Rulemakings Scheduled for Agenda in the Next Thirty Days
2. Rule Proposals Open for Comment/Scheduled for Hearing
3. New Rulemakings Approved Since Last Regulatory Forum

Staff: Pharr Andrews, (512) 239-6124

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Policy Section Activities

Federal Legislation Initiatives

President Clinton signed the Defense Appropriations Bill into law despite a controversial provision added in conference that will apparently shield Department of Defense installations from environmental penalties. The rider provides that no fiscal year (FY) 2000 appropriated funds may be used to pay fines or penalties assessed either by the U.S. Environmental Protection Agency (EPA) or by states for violations of any environmental statute. It also precludes use of funds for supplementary environmental projects in lieu of penalties.

Senator Bob Smith (R-N.H.) was appointed as chair of the Environment and Public Works Committee on October 26, 1999, succeeding the late Senator John Chaffee who died October 24 of heart failure.

Federal Rulemaking and Guidance Initiatives

EPA's draft Hazardous Waste Identification Rule (HWIR) is expected out soon, although numeric exit level requirements have been dropped from the draft. EPA is under a court mandate to publish the HWIR for process waste, and is requesting comments on the complicated model used to run risk assessments for various waste stream's constituent levels. Staff contact: Susi Ferguson, (512) 239-2320

EPA has recently issued guidance to its regional offices that the agency's policy of reduced penalties for Clean Air Act violators who turn themselves in *applies* to the law's New Source Review (NSR) program. The guidance indicates that the agency's audit policy may be applied in NSR cases. The audit policy allows EPA to waive portions of penalties for companies that audit their own environmental performance and report violations to state or federal regulators. Staff contact: Liz Hendler, (512) 239-1967

EPA's proposed amendments to its rules for establishing Total Maximum Daily Loads (TMDLs) and a

companion rule amending the National Pollutant Discharge Elimination System (NPDES) and water quality standards rules have had the comment period extended in response to Congressional direction in EPA's appropriations bill. On October 27, 1999, EPA published notice extending the comment period to January 20, 2000. Staff contact: Todd Chenoweth, (512) 239-4483

The Final Storm Water Phase II Rule was signed by Administrator Browner on October 29, 1999. It should be published in the *Federal Register* in mid-November. Staff contact: Todd Chenowith, (512) 239-4483

Court Cases

U.S. vs. ASARCO - A federal judge in Idaho has ruled that while Superfund allows for retroactive application of damages, the total amount any one company pays should be limited by fairness. Judge Edward Lodge dismissed a summary judgement motion filed by the mining companies challenging the ability of federal trustees to recover response costs for conduct that occurred before the enactment of the Superfund law. At issue is whether language in the Superfund law would violate the due process and takings clauses of the Constitution.

American Trucking Associations, et al vs. EPA - On May 14, 1999, the DC Circuit Court of Appeals remanded new ozone and particulate matter standards back to EPA, saying that Congress had unconstitutionally delegated the power to EPA to set standards. EPA filed a petition for re-hearing before the entire Court of Appeals. However, on October 29, 1999, The DC Circuit Court of Appeals denied the petition for rehearing. These court cases have caused a considerable degree of regulatory uncertainty--states and local areas must now plan for a standard that may change in the future. Staff contact: Liz Hendler, (512) 239-1967

Executive Review Letters from October 13, 1999 through November 18, 1999

November 8, 1999

TNRCC responded to a request from the Nuclear Regulatory Commission (NRC) for answers to questions posed by the U.S. House of Representatives Committee on Commerce. Two of the questions from the committee required responses from agreement states so that a complete response could be given by the NRC. The questions addressed definitions and criteria applicable to regulation of radioactive wastes. Staff contact: George Fitzgerald, (512) 239-6070

Key National Policy Association Meetings

The Board of Representatives of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) met in New Orleans on October 12-13, 1999. The discussion focused primarily on the status of the proposed regulations for total maximum daily loads (TMDL) and associated proposed regulations dealing with NPDES permitting and water quality standards. Representatives from ASIWPCA, the Environmental Council of the States, and other state regulatory agency representatives will meet with EPA headquarters staff on November 30 and December 1, 1999 in Wye Woods, Maryland for an in-depth discussion of the proposed TMDL/NPDES regulations. At the October meeting, the ASIWPCA Board also met with representative of the American Metropolitan Sewage Agencies (AMSA) to discuss common concerns with the development of regulations dealing with sanitary sewer overflows. Staff contact: Clyde Bohmfalk, (512) 239-1315

The State and Territorial Air Pollution Program Administrators (STAPPA) held their fall meeting in Stevenson, Washington, October 23-27, 1999. Many issues of concern to state air pollution programs were

discussed, including an update on the ozone and particulate matter court cases, a discussion of recent EPA NSR permitting enforcement issues, information on EPA's mobile source modeling timelines and requirements, innovative public information efforts; air toxics monitoring, modeling and permitting, and other issues. Staff contact: Liz Hendler, (512) 239-1967

The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) held their fall meeting in Atlanta, Georgia, October 18-19, 1999. Discussions focused on improving environmental cleanups in both the Resource Conservation and Recovery Act and the Comprehensive Environmental Responsibility, Compensation and Liability Act, new information efforts by EPA, upcoming federal rule proposals, and other key waste issues. Staff contact: Hector Mendieta, 239-6694

Handouts:

1. Policy Issues
2. OEPA Combined Monthly Status Report Memo from Randolph Wood to Jeffrey A. Saitas

Staff: Susi Ferguson, (512) 239-2320

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Strategic Assessment Division Activities

What follows is a listing of the State Implementation Plan (SIP)-related rule packages staff plans to bring before the commissioners at the December 16, 1999 agenda. Please note that the SIP Development Team has created a [special Web site for this agenda](#), where it will be posting each of these packages *as they are filed with the Chief Clerk*. However, persons wishing to make formal comments on these packages are cautioned that the versions on this page are subject to change prior to and/or at the agenda. Anyone wishing to make formal comments should therefore base their comments on the official versions, which will be posted to the agency's [Proposed and Adopted Rules](#) site after commission action on December 16.

In addition to the rule packages outlined below, staff will be proposing new Dallas/Fort Worth (DFW), Houston/Galveston (HGA), and Beaumont/Port Arthur (BPA) SIP narratives, which will include a tidbit for each of the 1-hour regions, excluding El Paso. The HGA narrative will be a short one that will fulfill a commitment to the U.S. Environmental Protection Agency (EPA).

- **Rule Log No. 99046-117-AI (Utility NO_x Reductions)** - This regional utility rule--separate from the Senate Bill (SB) 7 rulemaking--that will call for a 50% reduction in emissions from utilities in the eastern half of the state that are not covered by SB 7.
- **Rule Log No. 99049-117-AI (Non-Utility NO_x Controls)** - This package calls for a reduction in emissions from cement kilns in the eastern half of the state.
- **Rule Log No. 99055A-114-AI (Low Emission Diesel Fuel Rules for DFW)** - This package will apply to on- and off-highway fuel cells, will call for fuel with lower aromatics and increased cetane levels, and will apply to the 12-county CMSA area.
- **Rule Log No. 99055B-114-AI (Reformulated Gasoline Rules for DFW)** - This package expands the requirements for the use of reformulated gasoline from the four nonattainment counties to the entire 12-county CMSA.

- **Rule Log No. 99055C-114-AI (Inspection and Maintenance Rules for DFW)** - This package implements an enhanced inspection/maintenance program for the twelve consolidated metropolitan statistical area (CMSA) counties (Collin, Dallas, Denton, Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant). The program will include accelerated simulation mode via dynamometers, on-board diagnostics, remote sensing.
- **Rule Log No. 99055D-117-AI (Major Source NO_x Rules for DFW)** - This package calls for an 88% reduction in emissions from utilities in the four DFW nonattainment counties (Denton, Collin, Tarrant, and Dallas).
- **Rule Log No. 99055E-114-AI (Airport GSE Rules for DFW)** - This package calls for the use of all-electric ground equipment (such as baggage carts) at DFW, Love, Mechem, and Alliance airports.
- **Rule Log No. 99055F-114-AI (DFW Voluntary Motor Vehicle Scrappage)** - This package provides guidance only--no rules--and will apply to the 12-county CMSA area.
- **Rule Log No. 99055G-114-AI (Cal Large Gas Engine Rules for DFW)** - This rule will be adopted by reference and will apply to off-road engines like forklifts.
- **Rule Log No. 99055H-114-AI (DFW Accel Purchase of Heavy Diesel Equip)** - This package assumes 50% Tier II engines and 50% Tier III engines by 2007 in the 12-county CMSA. The Tier IIs will be available in 2001, and the Tier IIIs will be ready in 2006.
- **Rule Log No. 99055I-114-AI (Water Heaters/Small Boilers - NO_x Cntrls)** - This will be an extremely cost-effective consumer products rule that will apply to the whole state.
- **Rule Log No. 99055J-114-AI (DFW Construction Operating/Use Limits)** - This package would call for a ban on the use of engines that move dirt (with the possible exception of wet concrete) in the 12-county CMSA during the hours of 6 a.m. - 12 p.m.
- **Rule Log No. 99055K-114-AI (California Low Emission Vehicle Rule)** - This package would implement the California Low Emission Vehicle program in the state of Texas.
- **Voluntary Mobile Emission Reduction Program (VMEP)** - This program, which will be located in the actual SIP narrative, will be guidance only--no rules.
- **Remote Sensing Rules** - These will be part of the I/M program mentioned above under Rule Log No. 99055C-114-AI, and may be expanded to apply to the 12-county CMSA.
- In addition to these rules, staff is studying the possibility of calling for a 5 mph reduction in the speed limit in the DFW area. This is still in the conceptual stage, however, as staff is not sure that the agency has the statutory authority to do this. The concept will be included in the SIP calculations.

Q: What exactly are the dynamometers you mentioned with respect to the I/M Program?

A: It's a device that you load the car on that enables you to run the vehicle in a stationary position so you can calculate its emissions while it's under a load.

Q: Was the speed limit reduction going to apply to four or twelve counties in DFW?

A: It would apply to the 12-county CMSA.

Q: Could you give a little more detail on the airport rules?

A: They would basically mandate that by, say, 2005-2007 all ground equipment at the four airports I mentioned would have to be electric. The rules would target engines like the tugs used to haul baggage around the terminals. Delta Airlines has already started this voluntarily, and they are reporting that although there is initially a higher cost for obtaining the equipment, it's cheaper to run over the long haul than the diesel equipment, so it should result in a cost savings for the regulated community.

Q: Did you say there would be an overall 88% reduction in NO_x for the DFW area?

A: No, that figure would just apply to the utilities. The overall figure would be closer to 40-65%.

Q: Will there be any VOC reductions in these rules?

A: Yes, there will be VOC reductions associated with most of them, since the modeling indicates that we need it.

Q: What's the timeline for the implementation of the diesel rules?

A: Probably a two-year time frame--maybe by 2002.

Q: Will the 12-county accelerated simulation mode testing be centralized testing, or will it occur at test and repair facilities?

A: It would be at test and repair facilities.

Q: Where does that 40-65% overall figure apply again?

A: Just for the DFW area.

Q: So DFW hasn't been bumped up?

A: No, due in part to the measures we're taking in these rule packages.

Staff: Bill Jordan, (512) 239-2583

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Special Reports:

Texas Pollutant Discharge Elimination System (TPDES) Update

The good news: on September 14, 1998, the TNRCC finally won its lengthy battle to obtain National Pollutant Discharge Elimination System delegation from the U.S. Environmental Protection Agency (EPA). The bad news: along with that delegation, the TNRCC inherited a 3,600-application backlog from the federal agency.

Fortunately, staff in the commission's Wastewater Permitting Section has managed to clear a great deal of that backlog. The first step toward achieving that goal was discovering that approximately 1,800 of the applications no longer required any action, since in several cases the businesses that originally filed the applications were no longer in existence.

The next step was a lot of hard work on the part of agency employees. As of November 18, 1999, staff has filed 1,645 applications with the Chief Clerk. Of these, 1,376 have been noticed, and staff has issued 1,003

permits. The target date for processing all remaining applications is still December 31, 1999, and staff is confident that this goal is achievable.

Q: In the past, facilities wishing to consolidate their federal and state applications were told to hold on for a while until you guys had cleared your backlog. Now that you're almost done, is it okay for those facilities to renew their requests?

A: If you have current EPA and TNRCC permits, you can request a renewal, but it may not be in your interest to do so, since we're staggering the permits according to a basin cycle, so that all the ones for a particular basin will be due at the same time. It may therefore be in your interest to wait until the permits for your basin are due to renew your request. Feel free to call me at (512) 239-4527 if you want more detailed information and advice.

Handout: TPDES Permitting Effort

Staff: Steve Ligon, (512) 239-4527

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Update on Senate Bills 7 and 766

As you may recall, the Senate Bill (SB) 7 rulemaking package pertains to the deregulation of the electric industry, sets up an allowance banking and trading system, and requires grandfathered electric generating facilities to apply for and receive permits by 2007 (it also gives permitted facilities the option of opting in to this process). The SB 766 package allows facilities to get permits voluntarily if they implement best available control technology.

Staff took both of these packages before the commission for proposal on August 25, 1999, and conducted a week-long series of public hearings in El Paso, Lubbock, Dallas, Beaumont, Houston, and Austin. Attendance at the hearings was surprisingly sketchy; however, staff did receive a flood of written comments (over 200 pages worth) which it is still busy analyzing. The target date for adoption of both packages is either December 15 or 16 (the commission has added a new agenda on the 16th).

Unfortunately, staff has not yet briefed the commissioners on the analysis of testimony, so there is little that can be reported publicly at this juncture. One tidbit: in response to numerous comments, staff has opted for a more logical ordering of the monitoring requirements in the adoption version of both packages.

Q: When will drafts of these packages be available to the public?

A: Probably around the time the agenda is released.

Q: When will you begin Phase II of SB 766?

A: Staff has already completed about 30% of the work on this package and is planning on taking it before the commission for authorization to publish around March of 2000.

Staff: Beecher Cameron, (512) 239-1495

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Upset/Maintenance Rules Update

Back in February of 1999 we got the bad news from the U.S. Environmental Protection Agency (EPA) that

it wasn't happy with the original draft of our proposed upset/maintenance rules. Specifically, the agency thought our record keeping requirements were inadequate and that the rules placed too much of the burden of proof on the TNRCC's executive director. The objections were serious enough that EPA threatened State Implementation Plan (SIP) disapproval if the rules weren't changed.

In response to EPA's feedback, staff has been working on a revamped Upset/Maintenance package, which it hopes to take before the commission on January 12, 2000, for authorization to publish. This new version keeps intact the concept of reportable quantities, and more explicitly lists all of the reporting requirements. Staff is optimistic that this new version will pass muster.

Q: Have you guys heard about the Bay Area cases where EPA rejected valve leakage?

A: No, I can't say that we have, but I'd be very interested in hearing the details after the forum.

Q: So the EPA SIP disapproval threat is the driving engine for the new version of these regulations?

A: Yes.

Q: Have you incorporated EPA's view concerning the burden of proof and reasonable avoidability in the new version of the proposal?

A: Yes.

Staff: Beecher Cameron, (512) 239-1495

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Texas Risk Reduction Rules Update (Guidance Documents)

The Texas Risk Reduction Program (TRRP) Rule was approved at the September 2, 1999 Commissioners' Work Session, and went to the *Texas Register* the very next day. The rule went into effect on September 23, 1999, for voluntary usage. Mandatory usage for new projects (non-Petroleum Storage Tank (PST)) commences on May 1, 2000, and for new PST projects on September 1, 2003.

The intervening eight months between the voluntary and mandatory implementation dates will allow users to learn the rule and evaluate its significance for ongoing or planned projects. This time period will also be used by TNRCC staff to develop guidance to aid implementation of the rule. This is a sizable task. There are more than 50 specific topics mentioned in the final rule preamble for which the TNRCC committed to develop guidance. The agency also stated that stakeholders would be involved in development of some of these items.

Towards that end, staff has formed a steering committee with representatives from the Industrial Council on the Environment, Texas Chemical Council, Texas Oil and Gas Association, Association of Electric Companies of Texas, and an expert in matters of real estate law and banking. The steering committee met this week (on November 15) to set priorities. Efforts will focus on five broad areas of guidance:

1. General and Applicability - The steering committee has the lead to develop these topics.
2. Assessment
3. Protective Concentration Levels
4. Remediation
5. Reporting and Other

The TNRCC will form other workgroups to address topics under the broad areas 2 through 5. The steering

committee will have a primary and secondary liaison to the other workgroups. Persons interested in participating in a workgroup should contact Chet Clarke, Manager, Technical Support Section, Remediation Division (phone: 512/239-2268; E-mail: cclarke@tnrcc.state.tx.us) to volunteer their services. An announcement will be made in December on the Internet to this effect. The agency would like to keep the workgroups to a manageable size of about eight people. If an individual can represent other groups, that would be preferable.

Staff: Paul Lewis, (512) 239-2341

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Texas Water Quality Standards Update

The Texas Surface Water Quality Standards (30 TAC Chapter 307) establish instream water quality requirements for Texas streams, rivers, lakes, estuaries, and other water bodies such as wetlands. The TNRCC is directed to establish water quality standards in Texas Water Code, §26.023. As required by the federal Clean Water Act, state water quality standards are publicly reviewed and revised as needed every three years.

Regional diversity in surface waters is given consideration by dividing major river basins, bays, and estuaries into defined segments (referred to as classified or designated segments). Segment-specific standards identify appropriate uses for specific water bodies (aquatic life, contact or noncontact recreation, drinking water, etc.) and list upper and lower limits for common indicators (criteria) of water quality--such as dissolved oxygen, temperature, pH, dissolved minerals, and fecal coliform bacteria. Other standards--such as toxic criteria to protect aquatic life and human health--are applied statewide.

Procedures for implementing the Texas Surface Water Quality Standards in wastewater discharge permits are described in the "[Implementation of the Texas Natural Resource Conservation Commission Standards Via Permitting](#)" regulatory guidance document (RG-194). The Implementation Procedures address how effluent limits are derived to maintain instream water quality standards.

STATUS OF THE REVISIONS

The TNRCC has received extensive comment and coordination through a standards workgroup which consists of TNRCC staff, other state agencies; and representatives of environmental interests, industries, cities, and agriculture. The agency anticipates proposing the revisions on January 12, 2000, and conducting a hearing on proposed revisions to the water quality standards and standards implementation procedures 45 days after the proposal. There will be a 60-day comment period on the proposal.

REVISIONS UNDER CONSIDERATION

- The addition of a provision to protect aquatic habitat. This provision would be intended to support TNRCC review of federal permits for dredging and filling.
- Revisions to toxic criteria for human health to incorporate new data in the U.S. Environmental Protection Agency's (EPA) databases. New human health toxic criteria for acrylonitrile, atrazine, methyl tertiary-butyl ether, perchlorate, and 1,3-dichloropropene.
- The adoption of better bacterial indicators to assess whether the water is suitable for swimming. *E. coli* and enterococcus would replace fecal coliform, the old indicator.

- The addition of marine seagrass propagation as a "use" to be protected where it occurs.
- A new description of standards applicability to wet weather conditions and storm water discharges.
- A less stringent aquatic-life use for the upper arm of the Sam Rayburn reservoir (from high to intermediate).
- A less stringent aquatic-life use for the Nueces River Tidal (from exceptional to high).
- Numerous additions to establish appropriate standards at individual sites where there are permitted discharges of treated wastewater. Seventy-two additional water bodies are designated for aquatic life uses and dissolved oxygen criteria, and 18 additional water bodies are assigned site-specific toxic criteria.
- Revision of the standards implementation procedures for wastewater permitting in order to provide a general update as needed, address proposed water quality standards, and incorporate updated provisions under the Texas Pollutant Discharge Elimination System.
- Consideration of the biological opinion by the U.S. Fish and Wildlife Service (USFW) on the previous revision of the water quality standards; USFW "reasonable and prudent measures" include additional protection for aquatic endangered species with respect to ammonia, chlorine, diazinon, and reduced spring flows.

Staff: Tom Weber, (512) 239-4576

239-6928 (Miami)

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239-6929 (Director)

Municipal Solid Waste Permitting Section Update

The Municipal Solid Waste (MSW) Permitting Section, managed by Dorca Zaragoza-Stone, is located in the Waste Permits Division, which is directed by Dale Burnett. The Waste Permits Division is part of the new Office of Permitting, Remediation and Registration, which is under the leadership of Deputy Director Leigh Ing. The structure of this section has evolved a great deal over the past several years, and is currently composed of 32 full-time employees split into three permits teams (led by Ada Lichaa, Jerry Allred, and David White). John Forehand is also serving as the section's technical specialist, reporting directly to Ms. Zaragoza-Stone. The section is located in Room 1201 on the first floor of Building F.

The section is primarily responsible for the review and processing of the following functions related to MSW facilities and commercial Class 1 non-hazardous disposal facilities:

- new permits and major and minor amendments to permits;
- performance based liner and final cover demonstrations;
- permit modifications;
- registrations for compost, grease and grit, and transfer stations;
- closure of MSW landfill units;
- construction and development over closed landfills; and
- groundwater-related issues, including:
 - monitoring well system design, construction, and certification;

- analytical data review;
- landfill gas monitoring activities (with staff from the Remediation Division);
- landfill liner and final cover system design, construction, and evaluation; and
- special waste request review.

The administrative review of new permit applications and permit amendments was recently transferred to the Registration and Evaluation Division, directed by Grace Montgomery Faulkner.

Handout: Municipal Solid Waste Permits Section

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The next forum will be held on Thursday, January 13, 2000.

Handouts

<u>Item No.</u>	<u>Description</u>
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1	<u>Rules Tracking Log</u>
2	<u>Rulemakings Scheduled for Agenda in the Next 30 Days</u>
3	<u>Rule Proposals Open for Comment/Scheduled for Hearing</u>
4	<u>New Rulemakings Approved Since Last Regulatory Forum</u>
5	Policy Issues
6	OEPA Combined Monthly Status Report Memo from Randolph Wood to Jeffrey A. Saitas
7	TPDES Permitting Effort
8	Municipal Solid Waste Permits Section

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